IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 591 OF 2004

Goa Board of Secondary & Higher
Secondary Education, through its
Secretary, having its Office at
Alto-Betim, Goa. ..... Petitioner.

V/s

M/s. Packers India,
a registered Partnership Firm,
having its Office at C1/A,
Shangrila, C Miramar, Panaji,
Goa, represented by its Partners

(1) Shri Lincoln Furtado,

(2) Shri Lenin Furtado,
both major, married, through their
duly constituted attorney Shri
Jawaharlal de Monte Furtado,
major, married, businessman,
resident of Vivenda Monte Furtado,
St. Mary's Colony, Miramar, Panaji, Goa.

2. Government of Goa, through its
Chief Secretary, having its Office
at Secretariat, Panaji, Goa. ..... Respondents.

Mr. J.P. Mulgaonkar, Advocate for the petitioner.

Mr. Arun Bras de Sa, Advocate for the respondent No.1.

CORAM : A.P. LAVANDE, J.

DATE : 27TH JANUARY, 2005.

ORAL ORDER :

By this petition, the petitioner challenges the legality of order dated 19.10.2004, passed by the IInd Additional District Judge, Panaji in Regular Civil Suit No.108/2004 filed by respondent No.1.

2. M/s. Packers India, a registered partnership firm, represented by its partner Shri Lincoln Furtado and Shri Lenin Furtado, filed Regular Civil Suit No.108/2004 against Goa Board of Secondary and Higher Secondary Education, the petitioner herein and the Government of Goa for recovery of money, due and payable to the plaintiff towards the printing and binding of the textbooks during the year 1992. Written statement was filed by the petitioner who is the original defendant No.1 on 26.8.1993 and the plaintiff's evidence was concluded on 14.10.2003. Thereafter, on 13.9.2004, the defendant No.1/petitioner herein filed an application seeking leave to produce the additional documents which are (1) report dated 2/8/2002 from the Director of Printing and Stationery, Government Printing Press; and (2) report dated 30.7.2002 of the Quality Testing Centre. According to the plaintiff, the said reports were obtained subsequent to the filing of the written statement and the same were relevant and necessary for determining the question in controversy between the parties. The application was opposed and after hearing both

sides, the trial Court passed the impugned order, dismissing the application for production of the said documents. By the present petition, the petitioner challenges the said order.

3. Mr. Mulgaonkar, learned Counsel appearing for the petitioner submits that the documents were not in possession of defendant No.1 when the evidence was led by defendant No.1 and, as such, the trial Court could not have dismissed the application for producing the said documents. It is further submitted that good cause was shown by defendant No.1 for producing the documents after the evidence was led by the plaintiff. It is further submitted that the trial Court has not exercised jurisdiction properly while passing the impugned order. Per contra, Mr. A.B. D'Sa, learned Counsel appearing for respondent No.1 has submitted that no fault could be found with the impugned order and this is not a case in which the impugned order deserves to be set aside in exercise of writ jurisdiction.

4. I have considered the submissions made by the learned Counsel for both sides. No doubt, if the documents could not be produced by the defendant at the time of filing the written statement because the same were not in possession of the defendant No.1, the defendant is entitled to produce the same at later stage, after seeking leave of the Court, upon showing good cause. The question in this case

is whether any cause has been shown by defendant No.1 to rely upon and produce the said documents at the belated stage. It is pertinent to note that Shri Krishna K. Nadkarni, (DW.1) has not made any reference to these reports in his evidence, which was filed by way of affidavit in January, 2004. The reports are of the year 2002. Defendant No.1 has absolutely not shown any cause for not producing the reports earlier. The suit is of the year 1993 and defendant No.1 chose to get these reports only in the year 2002. Even after getting these reports in 2002, defendant No.1 chose not to file an application till the plaintiff closed its case. As stated above, even in the evidence of Shri Nadkarni, no reference has been made to these reports. The trial Court, on the basis of this factual position, has held that no cause has been shown by defendant No.1 for producing the said documents after considerable delay. The finding recorded by the trial Court that no justification has been given for the delay which is unexplained, cannot be said to be perverse, warranting interference by this Court in exercise of writ jurisdiction. The parameters of interference by this Court, in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution, have been laid down by the Apex Court in the case of ***Surya Dev Rai vs. Ram Chander Rai and others,*** (AIR 2003 SC 3044). Having regard to the parameters laid down in paragraph 38 of the said Judgment, I am of the view that no case has been made out for interference by this Court to set aside the impugned order.

5. In the result, therefore, I find no merit in this petition and the same is summarily rejected.

A. P. LAVANDE, J.

ssm.